of the stock of the X railroad and a minority of the stock in the competing Y railroad, of his own initiative, buys enough more stock in the Y road to give him control of that; or if he acquires by operation of law enough more shares to give him such control, is he guilty of an illegal restraint of trade? Competition is just as effectively destroyed. These and other questions, presented more fully in Mr. Randolph's article, 3 COLUMBIA LAW REVIEW 168, 221, 298, will have to be determined if the decision in the Securities case is affirmed by the Supreme Court.

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LIABILITY OF A MEMBER OF AN UNINCORPORATED CLUB.—Courts of law, voicing the common understanding of men, have always recognized the essential difference between the legal relations of men voluntarily organized for social purposes into a society or club and those associated for pecuniary profit. It is in this particular among others that a club differs so materially from a partnership. *Lindley on Partnership* 6th Ed. p. 13. It is clear that a member of a club does not by the act of joining constitute the trustee or the committee of the club his agents for the purpose of contracting debts. *Todd* v. *Emly* (1841) 8 M. & W. 505. By the payment of his initiation fee and dues he acquires a privilege, the right to enjoy the club premises. His dues with those of all the members constitute a fund from which within their authorized powers the trustees or committee managing the club may draw for the purpose of defraying expenses. If this fund will not be sufficient for a contemplated outlay it is their duty, suggests Lord Abinger C. B. in *Flemyng* v. *Hector* (1836) 2 M. & W. 172, to call on the members for further subscriptions. In the case cited an action was brought by Flemyng, a wine merchant against Hector a member of the defunct Westminster Reform Club. The defendant had never dealt with the plaintiff but it was in evidence that he had frequently been heard to call for Flemyng's wine. It was held, after full consideration by the whole court that there was no agency either by prior authorization or subsequent ratification, that the fact of membership carried with it no idea of principal and agent, and that if the plaintiff relied on such agency he must prove it as he would any other fact. The interest of a member in the property of the club seems to be at most an inchoate right to a proportionate share of the assets on dissolution and even this he loses when he ceases to be a member. *In Matter of St. James Club* (1852) 2 D. M. & G. 382. His interest seems to be little more than a license revocable for cause, *Hopkinson Marquis of Exeter* (1867) L. R. 5 Eq. 63, neither assignable, transmissible nor descendible. In brief, the nature of a member's interest, the character of a club and the common acceptation of a member's obligation by the world at large, all tend to negative any liability beyond that for the stated dues and assessments provided for by the rules of the Club.

This conception of a club member's freedom from liability founded as it is, on the tacit understanding of all men has been found sufficient to govern the application of an established rule of law in the recent case of *Wise* v. *Perpetual Trustee Co.* (1903) 72 L. J. P. C. 31. In that case the plaintiff as administrator of the estate of one of the trustees of the New South Wales Club, sought from the defendant,

among others, indemnity from certain liabilities resulting from the position of trustee. While the defendant was a member of the club, at a regular meeting, a committee of which the plaintiff's testator was one, was authorized to lease certain premises for the occupation of the club and to become trustees thereof. This was done, the trustees executing the lease, with various onerous covenants for the payment of rent on which they became liable, and for indemnity from this liability the suit was brought. No agency was established and the broad question was whether, as the relation of trustee and *cestuis que trustent* existed, the *cestuis* were bound to indemnify the trustee against all losses sustained by reason of his ownership of the trust *res*. The case was treated by the court as one of novel impression, the conclusion reached being that the defendant was not liable.

Lord Lindley who delivered the opinion had only two years before, *Hardoon* v. *Belilios* (1901) 70 L. J. P. C. 9, declared in emphatic terms that the right of a trustee to indemnity from the *cestui*, where acting within the terms of his trust, was a right springing inevitably out of the trust relation. This right of the trustee, based apparently on the equitable principle that he who has the benefits shall also bear the burdens of ownership seems well established in the English law. *Hardoon* v. *Belilios*, *supra*; *Castellan* v. *Hobson* (1870) L. R. 10 Eq. 47. Conceding, however, under the facts in the principal case that the relation of trustee and *cestuis que trustent* existed and admitting the equitable principle that the beneficial owner should bear the burdens of ownership, the decision is sound since the evidence of club usage established the terms of the trust. The case is analogous where the trust deed expressly provides for indemnity, and where the *cestui que trust* is not liable beyond the sum so stipulated. *Gillan* v. *Morrison* (1847) 1 De Gex & Sm. 421, *Selwyn* v. *Harrison* (1862) 2 J. & H. 334. To reach a result contrary to the principal case would be to impose a liability inconsistent with the terms on which the defendant became a member of the club.

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Liability of Shareholders in a "De Facto" Corporation.— Are stockholders in an association, acting as a corporation, partners *inter sese*, where a *bona fide* attempt to comply with the requisites of incorporation has failed? This question was answered in the negative by the Supreme Court of Maryland in a suit for an accounting on a partnership basis by the plaintiff, a minority stockholder, against the defendant, the majority stockholder, in a corporation which had failed to comply strictly with the statute. *Cannon* v. *Brush Electric Co., et al.* (1903, Md.) 54 Atl. 121. Conceding that the company had no legal existence as a corporate body, the court went on the ground that the parties intended to be bound by their charter; and that such intent would be given effect as between themselves, whatever might be their relation to third parties Did the parties intend to define their relation in the event of their failure to become a corporation, when their charter was only to take effect upon corporate existence being accomplished? They intended to become stockholders in a corporation, doubtless, but this they failed to do. They did not provide for what has happened, and the law, therefore, must predicate their relation from their acts. Under such circumstances, the authorities are at